

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddflaw.com
abacon@toddflaw.com
mgeorge@toddflaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CLASS ACTION COMPLAINT

1 Plaintiff ROBERT BOHLKE (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of GENERAL MOTORS FINANCIAL
8 COMPANY, INC (“Defendant”), in negligently, knowingly, and/or willfully
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
10 Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related
11 regulations, specifically the National Do-Not-Call provisions, thereby invading
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendant, a
17 Texas corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call in
18 violation of the TCPA, which, when aggregated among a proposed class in the
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
20 Therefore, both diversity jurisdiction and the damages threshold under the Class
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Central
23 District of California pursuant to *28 U.S.C. 1391(b)* and because Defendant does
24 business within the State of California and Plaintiff resides within the County of
25 Los Angeles.

26 **PARTIES**

27 4. Plaintiff, ROBERT BOHLKE (“Plaintiff”), is a natural person
28 residing in Los Angeles, California and is a “person” as defined by *47 U.S.C. § 153*

(39).

5. Defendant, GENERAL MOTORS FINANCIAL COMPANY, INC (“Defendant”), is a finance company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around September of 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone number ending in -9695, in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone number (949) 272-9307, confirmed to belong to Defendant.

11. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

1 12. During all relevant times, Defendant did not possess Plaintiff's "prior
2 express consent" to receive calls using an automatic telephone dialing system or an
3 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
4 227(b)(1)(A).

5 13. Further, Plaintiff's cellular telephone number ending in -9695 was
6 added to the National Do-Not-Call Registry on or about July 27, 2003.

7 14. Defendant placed multiple calls soliciting its business to Plaintiff on
8 his cellular telephone ending in -9695 in or around September 2017.

9 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
10 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

11 16. Plaintiff received numerous solicitation calls from Defendant within a
12 12-month period.

13 17. Plaintiff requested for Defendant to stop calling Plaintiff during one
14 of the initial calls from Defendant, thus revoking any prior express consent that had
15 existed and terminating any established business relationship that had existed, as
16 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

17 18. Despite this, Defendant continued to call Plaintiff in an attempt to
18 solicit its services and in violation of the National Do-Not-Call provisions of the
19 TCPA.

20 19. Upon information and belief, and based on Plaintiff's experiences of
21 being called by Defendant after requesting they stop calling, and at all relevant
22 times, Defendant failed to establish and implement reasonable practices and
23 procedures to effectively prevent telephone solicitations in violation of the
24 regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

25 20. Plaintiff brings this action individually and on behalf of all others
26 similarly situated, as a member the four proposed classes (hereafter, jointly, "The
27 Classes"). The class concerning the ATDS claim for no prior express consent

1 (hereafter “The ATDS Class”) is defined as follows:

2 All persons within the United States who received any
3 solicitation/telemarketing telephone calls from
4 Defendant to said person’s cellular telephone made
5 through the use of any automatic telephone dialing
6 system or an artificial or prerecorded voice and such
7 person had not previously consented to receiving such
8 calls within the four years prior to the filing of this
Complaint

9 21. The class concerning the ATDS claim for revocation of consent, to the
10 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
11 as follows:

12 All persons within the United States who received any
13 solicitation/telemarketing telephone calls from
14 Defendant to said person’s cellular telephone made
15 through the use of any automatic telephone dialing
16 system or an artificial or prerecorded voice and such
17 person had revoked any prior express consent to receive
18 such calls prior to the calls within the four years prior to
the filing of this Complaint.

19 22. The class concerning the National Do-Not-Call violation (hereafter
20 “The DNC Class”) is defined as follows:

21 All persons within the United States registered on the
22 National Do-Not-Call Registry for at least 30 days, who
23 had not granted Defendant prior express consent nor had
24 a prior established business relationship, who received
25 more than one call made by or on behalf of Defendant
26 that promoted Defendant’s products or services, within
27 any twelve-month period, within four years prior to the
28 filing of the complaint.

23. The class concerning the National Do-Not-Call violation following

1 revocation of consent and prior business relationship, to the extent they existed
2 (hereafter “The DNC Revocation Class”) is defined as follows:

3 All persons within the United States registered on the
4 National Do-Not-Call Registry for at least 30 days, who
5 received more than one call made by or on behalf of
6 Defendant that promoted Defendant’s products or
7 services, after having revoked consent and any prior
8 established business relationship, within any twelve-
month period, within four years prior to the filing of the
complaint.

9
10 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
11 of all persons within the United States who received any solicitation telephone calls
12 from Defendant to said person’s cellular telephone made through the use of any
13 automatic telephone dialing system or an artificial or prerecorded voice and such
14 person had not previously not provided their cellular telephone number to
15 Defendant within the four years prior to the filing of this Complaint.

16 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,
17 consisting of all persons within the United States who received any
18 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
19 telephone made through the use of any automatic telephone dialing system or an
20 artificial or prerecorded voice and such person had revoked any prior express
21 consent to receive such calls prior to the calls within the four years prior to the
22 filing of this Complaint.

23 26. Plaintiff represents, and is a member of, The DNC Class, consisting
24 of all persons within the United States registered on the National Do-Not-Call
25 Registry for at least 30 days, who had not granted Defendant prior express consent
26 nor had a prior established business relationship, who received more than one call
27 made by or on behalf of Defendant that promoted Defendant’s products or services,
28 within any twelve-month period, within four years prior to the filing of the

1 complaint.

2 27. Plaintiff represents, and is a member of, The DNC Revocation Class,
 3 consisting of all persons within the United States registered on the National Do-
 4 Not-Call Registry for at least 30 days, who received more than one call made by or
 5 on behalf of Defendant that promoted Defendant's products or services, after
 6 having revoked consent and any prior established business relationship, within any
 7 twelve-month period, within four years prior to the filing of the complaint.

8 28. Defendant, its employees and agents are excluded from The Classes.
 9 Plaintiff does not know the number of members in The Classes, but believes the
 10 Classes members number in the thousands, if not more. Thus, this matter should
 11 be certified as a Class Action to assist in the expeditious litigation of the matter.

12 29. The Classes are so numerous that the individual joinder of all of its
 13 members is impractical. While the exact number and identities of The Classes
 14 members are unknown to Plaintiff at this time and can only be ascertained through
 15 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
 16 The Classes includes thousands of members. Plaintiff alleges that The Classes
 17 members may be ascertained by the records maintained by Defendant.

18 30. Plaintiff and members of The ATDS Class and The ATDS Revocation
 19 Class were harmed by the acts of Defendant in at least the following ways:
 20 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
 21 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
 22 members to incur certain charges or reduced telephone time for which Plaintiff and
 23 ATDS Class and ATDS Revocation Class members had previously paid by having
 24 to retrieve or administer messages left by Defendant during those illegal calls, and
 25 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
 26 members.

27 31. Common questions of fact and law exist as to all members of The
 28 ATDS Class which predominate over any questions affecting only individual

1 members of The ATDS Class. These common legal and factual questions, which
2 do not vary between ATDS Class members, and which may be determined without
3 reference to the individual circumstances of any ATDS Class members, include,
4 but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this
6 Complaint, Defendant made any telemarketing/solicitation call
7 (other than a call made for emergency purposes or made with
8 the prior express consent of the called party) to a ATDS Class
9 member using any automatic telephone dialing system or any
10 artificial or prerecorded voice to any telephone number
11 assigned to a cellular telephone service;
- 12 b. Whether Plaintiff and the ATDS Class members were damaged
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant should be enjoined from engaging in such
15 conduct in the future.

16 32. As a person that received numerous telemarketing/solicitation calls
17 from Defendant using an automatic telephone dialing system or an artificial or
18 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
19 claims that are typical of The ATDS Class.

20 33. Common questions of fact and law exist as to all members of The
21 ATDS Revocation Class which predominate over any questions affecting only
22 individual members of The ATDS Revocation Class. These common legal and
23 factual questions, which do not vary between ATDS Revocation Class members,
24 and which may be determined without reference to the individual circumstances of
25 any ATDS Revocation Class members, include, but are not limited to, the
26 following:

- 27 a. Whether, within the four years prior to the filing of this
28 Complaint, Defendant made any telemarketing/solicitation call

(other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
 - c. Whether Defendant should be enjoined from engaging in such conduct in the future.

34. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

35. Plaintiff and members of The DNC Class and DNC Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class and DNC Revocation Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class and DNC Revocation Class members were damaged thereby.

36. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but

1 are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this
3 Complaint, Defendant or its agents placed more than one
4 solicitation call to the members of the DNC Class whose
5 telephone numbers were on the National Do-Not-Call Registry
6 and who had not granted prior express consent to Defendant and
7 did not have an established business relationship with
8 Defendant;
- 9 b. Whether Defendant obtained prior express written consent to
10 place solicitation calls to Plaintiff or the DNC Class members'
11 telephones;
- 12 c. Whether Plaintiff and the DNC Class member were damaged
13 thereby, and the extent of damages for such violation; and
- 14 d. Whether Defendant and its agents should be enjoined from
15 engaging in such conduct in the future.

16 37. As a person that received numerous solicitation calls from Defendant
17 within a 12-month period, who had not granted Defendant prior express consent
18 and did not have an established business relationship with Defendant, Plaintiff is
19 asserting claims that are typical of the DNC Class.

20 38. Common questions of fact and law exist as to all members of The
21 DNC Class which predominate over any questions affecting only individual
22 members of The DNC Revocation Class. These common legal and factual
23 questions, which do not vary between DNC Revocation Class members, and which
24 may be determined without reference to the individual circumstances of any DNC
25 Revocation Class members, include, but are not limited to, the following:

- 26 a. Whether, within the four years prior to the filing of this
27 Complaint, Defendant or its agents placed more than one
28 solicitation call to the members of the DNC Class whose

1 telephone numbers were on the National Do-Not-Call Registry
2 and who had revoked any prior express consent and any
3 established business relationship with Defendant;

- 4 b. Whether Plaintiff and the DNC Class member were damaged
5 thereby, and the extent of damages for such violation; and
6 c. Whether Defendant and its agents should be enjoined from
7 engaging in such conduct in the future.

8 39. As a person that received numerous solicitation calls from Defendant
9 within a 12-month period, who, to the extent one existed, had revoked any prior
10 express consent and any established business relationship with Defendant, Plaintiff
11 is asserting claims that are typical of the DNC Revocation Class.

12 40. Plaintiff will fairly and adequately protect the interests of the members
13 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
14 class actions.

15 41. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Classes members is impracticable. Even if every Classes member could
18 afford individual litigation, the court system could not. It would be unduly
19 burdensome to the courts in which individual litigation of numerous issues would
20 proceed. Individualized litigation would also present the potential for varying,
21 inconsistent, or contradictory judgments and would magnify the delay and expense
22 to all parties and to the court system resulting from multiple trials of the same
23 complex factual issues. By contrast, the conduct of this action as a class action
24 presents fewer management difficulties, conserves the resources of the parties and
25 of the court system, and protects the rights of each Classes member.

26 42. The prosecution of separate actions by individual Classes members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Classes members not parties to

such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

3 43. Defendant has acted or refused to act in respects generally applicable
4 to The Classes, thereby making appropriate final and injunctive relief with regard
5 to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

10 44. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-43.

12 45. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
15 *47 U.S.C. § 227 (b)(1)(A)*.

16 46. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
17 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

19 47. Plaintiff and the ATDS Class and ATDS Revocation Class members
20 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

26 48. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-43.

28 ||| 49. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
3 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

4 50. As a result of Defendant's knowing and/or willful violations of 47
5 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class
6 members are entitled an award of \$1,500.00 in statutory damages, for each and
7 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

8 51. Plaintiff and the Class members are also entitled to and seek injunctive
9 relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

14 52. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-43.

16 53. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
19 *47 U.S.C. § 227 (c)(5)*.

20 54. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
21 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
22 award of \$500.00 in statutory damages, for each and every violation, pursuant to
23 *47 U.S.C. § 227(c)(5)(B)*.

24 55. Plaintiff and the DNC Class and DNC Revocation Class members are
25 also entitled to and seek injunctive relief prohibiting such conduct in the future.

26 | //

27 | //

28 | //

1 **FOURTH CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227 et seq.**

5 **On Behalf of the DNC Class and DNC Revocation Class**

6 56. Plaintiff repeats and incorporates by reference into this cause of action
7 the allegations set forth above at Paragraphs 1-43.

8 57. The foregoing acts and omissions of Defendant constitute numerous
9 and multiple knowing and/or willful violations of the TCPA, including but not
10 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
11 in particular *47 U.S.C. § 227 (c)(5)*.

12 58. As a result of Defendant's knowing and/or willful violations of *47
13 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
14 are entitled an award of \$1,500.00 in statutory damages, for each and every
15 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

16 59. Plaintiff and the DNC Class and DNC Revocation Class members are
17 also entitled to and seek injunctive relief prohibiting such conduct in the future.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

20 **FIRST CAUSE OF ACTION**

21 **Negligent Violations of the Telephone Consumer Protection Act**

22 **47 U.S.C. §227(b)**

- 23 • As a result of Defendant's negligent violations of *47 U.S.C.
24 §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation
25 Class members are entitled to and request \$500 in statutory damages,
26 for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
27 • Any and all other relief that the Court deems just and proper.

1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227(b)**

- 5 • As a result of Defendant's willful and/or knowing violations of 47
6 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS
7 Revocation Class members are entitled to and request treble damages,
8 as provided by statute, up to \$1,500, for each and every violation,
9 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- 10 • Any and all other relief that the Court deems just and proper.

11 **THIRD CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(c)**

- 14 • As a result of Defendant's negligent violations of 47 U.S.C.
15 §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class
16 members are entitled to and request \$500 in statutory damages, for
17 each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- 18 • Any and all other relief that the Court deems just and proper.

19 **FOURTH CAUSE OF ACTION**

20 **Knowing and/or Willful Violations of the Telephone Consumer Protection
21 Act**

22 **47 U.S.C. §227(c)**

- 23 • As a result of Defendant's willful and/or knowing violations of 47
24 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation
25 Class members are entitled to and request treble damages, as provided
26 by statute, up to \$1,500, for each and every violation, pursuant to 47
27 U.S.C. §227(c)(5).
- 28 • Any and all other relief that the Court deems just and proper.

60. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 9th Day of August, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff